

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 29, 2011

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

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Appeal No. 2010AP938-CR

Cir. Ct. No. 2008CF422

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEFFERY ROYCE JONES,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: REBECCA F. DALLET, Judge. *Affirmed.*

Before Curley, P.J., Fine and Brennan, JJ.

¶1 PER CURIAM. Jeffery Royce Jones appeals the judgment convicting him of possession with intent to deliver cocaine (more than one gram but less than five grams), second or subsequent offense, as a party to the crime,

contrary to WIS. STAT. §§ 961.41(1m)(cm)1r., 961.48, and 939.05 (2007-08).¹ He also appeals the order denying his motion for postconviction relief. Jones argues that the State did not sufficiently prove the reliability and credibility of the confidential informant police relied on to justify the investigative stop of his vehicle. In addition, Jones argues that the circuit court erred when it denied his motion seeking disclosure of the identity of the confidential informant. We disagree and therefore affirm.

I. BACKGROUND.

¶2 The relevant facts are taken from the preliminary and suppression hearings. Detective Timothy Graham testified that on January 16, 2008, he met with a confidential informant whom he had never worked with before.² The informant relayed that he could call and arrange for the purchase of cocaine from an individual known to him as “R.J.” The informant told Detective Graham that he had obtained drugs from R.J. in the past.

¶3 At this point, Detective Graham took the informant to an undercover vehicle and allowed the informant to make several phone calls, using a speakerphone, to an individual who identified himself as R.J. During these calls, the informant made arrangements to purchase cocaine from R.J. Detective Graham was present in the vehicle when the calls were made.

¹ All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

² In subsequent references, we refer to the informant as a male only because this is how he was referenced during prior proceedings.

¶4 R.J. told the informant to meet him at the back of a gas station parking lot located in the City of Milwaukee. Detective Graham and the informant went to the specified location. The informant advised Detective Graham that R.J. drove a silver Pontiac Grand Prix. Detective Graham testified that the informant also had information that a woman, Tiera Jacobs, would be in the car with R.J. Shortly after R.J. said that he was on his way, Detective Graham saw the described vehicle drive to the back of the lot. The informant proceeded to identify the individual driving as R.J.

¶5 At this point in the investigation, Detective Graham directed police officers to conduct an investigative stop of the vehicle. Jones was identified as the driver and was arrested on an outstanding warrant. Jacobs was identified as his passenger. When asked whether there was any cocaine in the vehicle, Jacobs indicated to police that she had cocaine in her vagina, which a doctor later removed.

¶6 After concluding that Detective Graham had reasonable suspicion to make the stop based on the information supplied by the confidential informant, the circuit court denied Jones's motion to suppress evidence. The court also denied Jones's motion to compel disclosure of the identity of the confidential informant.

¶7 Following a jury trial, Jones was convicted of possession with intent to deliver cocaine (more than one gram but less than five grams), second or subsequent offense, as a party to the crime. He filed a motion seeking postconviction relief in which he asked the court to reverse its rulings on his suppression motion and his motion seeking disclosure of the identity of the confidential informant. The circuit court denied his motion, and Jones now appeals.

II. ANALYSIS.

A. *The investigative stop was supported by reasonable suspicion.*

¶8 Jones argues that the police lacked reasonable suspicion to stop the vehicle he was driving. We disagree.

¶9 Officers may stop and detain an individual if they have reasonable suspicion the individual committed a crime. See *Terry v. Ohio*, 392 U.S. 1, 30 (1968); *State v. Guzy*, 139 Wis. 2d 663, 675, 407 N.W.2d 548 (1987). When determining if the standard of reasonable suspicion was met, those facts known to the officer must be considered together as a totality of the circumstances. *State v. Richardson*, 156 Wis. 2d 128, 139-40, 456 N.W.2d 830 (1990). Whether undisputed facts establish reasonable suspicion justifying an investigative stop by police presents a question of constitutional fact subject to *de novo* review. See *State v. Colstad*, 2003 WI App 25, ¶8, 260 Wis. 2d 406, 659 N.W.2d 394.

¶10 An informant's tip may provide a law enforcement officer reasonable suspicion to effectuate an investigative stop. See *State v. Rutzinski*, 2001 WI 22, ¶17, 241 Wis. 2d 729, 623 N.W.2d 516. Because informants' tips vary greatly in reliability, the police must consider the tip's reliability and content before it can provide grounds for an investigative stop. *Id.*

Tips should exhibit reasonable indicia of reliability. In assessing the reliability of a tip, due weight must be given to: (1) the informant's veracity; and (2) the informant's basis of knowledge. These considerations should be viewed in light of the "totality of the circumstances," and not as discrete elements of a more rigid test: "[A] deficiency in one [consideration] may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability." Although there is no per se rule of reliability, these considerations outline a general spectrum

of potential types of tips that, under specific circumstances, can give rise to a reasonable suspicion.

Id., ¶18 (internal citations omitted; brackets in *Rutzinski*).

¶11 When police receive a tip from an informant that they are reasonably justified in believing to be truthful, police may rely solely on the tip to provide reasonable suspicion for a stop. *Id.*, ¶¶19-21. The reasonable justification often arises where the police know the informant’s identity and perhaps have received reliable tips in the past. *Id.* Likewise, a citizen informant, who happens upon a crime or suspicious activity and reports it to police, is subject to a much less stringent standard of reliability. *State v. Kolk*, 2006 WI App 261, ¶12, 298 Wis. 2d 99, 726 N.W.2d 337.

¶12 In contrast, when the tip is totally anonymous, the police must corroborate the information in the tip through independent investigation. *Rutzinski*, 241 Wis. 2d 729, ¶22. A tip from an unidentified informant may be “deemed reliable if it contains ‘inside information’ or a similar verifiable explanation of how the informant came to know of the information in the tip, which the police in turn independently corroborate.” *Id.*, ¶25. In other words, “if a tip contains strong indicia of an informant’s basis of knowledge, there need not necessarily be any indicia of the informant’s veracity.” *Id.*

¶13 At the outset we address Jones’s contention that the information supplied by Detective Graham concerning the discussions between the confidential informant and R.J. was largely based on unreliable hearsay. In making this argument, Jones seemingly overlooks that during the suppression hearing, the circuit court was to consider whether Detective Graham could “point to specific and articulable facts which, taken together with rational inferences from

those facts, objectively warrant[ed] a reasonable person with [his] knowledge and experience ... to believe that criminal activity [was] afoot.” *Id.*, ¶14. At issue then were the facts known to Detective Graham at the time he ordered the investigative stop. We discern no error in allowing him to testify regarding what the informant told him about conversations the informant had with R.J.³

¶14 Next, Jones claims that the State did not prove the informant’s veracity because there was no evidence that this particular informant had previously provided truthful information to the police or that the informant’s basis of knowledge was sufficient to justify police reliance on him. According to Jones, the informant in this case is better characterized as an anonymous tipster. We disagree.

¶15 While an informant may be considered more reliable if he or she has provided a reliable tip in the past and reveals the basis of his or her knowledge, a tip is not necessarily unreliable due to the absence of these factors. There are no specific prerequisites to a finding of confidential informant reliability. *State v. Jones*, 2002 WI App 196, ¶13, 257 Wis. 2d 319, 651 N.W.2d 305. Here, the confidential informant was sitting in Detective Graham’s car throughout the entire incident. The informant told Detective Graham that he would get drugs from R.J., who was later identified as Jones, because he had gotten drugs from him in the

³ Jones further argues that there was no evidence presented as to the telephone number that the informant dialed, that the evidentiary rule pertaining to authentication and identification of telephone conversations was not followed, and that the fact that the police did not record the calls hampered the circuit court’s ability to assess whether the telephone calls that Detective Graham overheard provided him with reasonable suspicion to order a stop. We are not convinced that any of these things were required for purposes of the suppression hearing, and Jones cites no case law that supports his arguments on these points. *See State v. Shaffer*, 96 Wis. 2d 531, 545-46, 292 N.W.2d 370 (Ct. App. 1980) (Arguments unsupported by references to “legal authority specifically supporting the relevant propositions” will not be considered.).

past. The informant knew how to get in contact with R.J. and proceeded to make arrangements to buy cocaine, thus providing Detective Graham with verifiable information as to his basis of knowledge. Further supplementing the reliability of the tip was Detective Graham's verification of the truth of the informant's predictions, which included the make and model of R.J.'s car, the identity of R.J.'s passenger, and R.J.'s appearance in the car at the specified location at the discussed time. We conclude that these facts support the informant's reliability.

¶16 Moreover, we are not persuaded by Jones's argument that the informant was anonymous because the State failed to establish that Detective Graham knew the informant's name. Even if we assume that this was the case, as the State points out, knowledge of the informant's name is not required. *See, e.g., State v. Robinson*, 2010 WI 80, ¶28, 327 Wis. 2d 302, 786 N.W.2d 463 (concluding that the fact that nameless informant personally walked into the police station, coupled with the specificity of the information provided, supported informant's credibility, despite his failure to explain how he came to know the information). Furthermore, in contrast to cases involving anonymous tipsters, here, because the informant was sitting in the car with Detective Graham, he could have been subjected to prosecution if the tip proved to be fabricated.⁴ *See* WIS. STAT. § 946.41. "[T]his threat of arrest could lead a reasonable police officer to conclude that the informant is being truthful." *See Rutzinski*, 241 Wis. 2d 729, ¶32.

⁴ This would be true, even if the informant's face was concealed, which is one of the arguments made by Jones in his reply brief.

¶17 Jones further contends that because the informant could not give more facts about R.J. (i.e., a complete name, a physical description including information such as age, race, height, weight, etc.), he should not have been relied upon. In focusing on the facts that were not provided by the informant, Jones glosses over the ones that were. The test is whether, under the totality of the circumstances, officers had reasonable suspicion of criminal activity to warrant the stop. We conclude that the test was satisfied under the circumstances presented.

¶18 Finally, Jones asserts that the facts of his case are less supportive of reasonable suspicion than those in *Kolk*, in which we upheld the suppression of evidence. In *Kolk*, the police received a tip from a citizen informant that Kolk would be transporting drugs to Madison in his car. *Id.*, 298 Wis. 2d 99, ¶¶2-3. The police followed Kolk and stopped him for traffic violations. *Id.*, ¶4. After the business of the routine traffic stop was concluded, the officer searched Kolk and his car and found drugs. *Id.*, ¶¶6-7. The State argued that the tip provided reasonable suspicion for Kolk's continued detention once the traffic stop was concluded, but we rejected this argument. *Id.*, ¶¶14-15. The tipster had not told the police how he or she knew of Kolk's legal or illegal activities, *id.*, ¶15, the information that the police were able to confirm was widely available, and the informant's predictions were general and weakly confirmed, *id.*, ¶¶16-18.

¶19 We agree with the State that the nature of the corroborated facts distinguish this case from *Kolk*. As set forth in the State's brief: "The informant here was right about many things before he and the detective even arrived at the gas station. Though the informant had not worked with police on any earlier case, he built a foundation for personal credibility well before identifying Jones as the drug dealer which led to the *Terry* stop." Given the extent to which the information was corroborated, we conclude that the tip provided sufficient

justification for an investigative stop of Jones. *See State v. Lopez*, 207 Wis. 2d 413, 426, 559 N.W.2d 264 (Ct. App. 1996) (“When an informant is shown to be right about some things he or she has alleged, it is probable that the informant is also right about others.”).

B. The circuit court properly denied Jones’s motion for disclosure of the confidential informant.

¶20 We also reject Jones’s claim that the circuit court erred when it denied his motion to compel disclosure of the confidential informant pursuant to WIS. STAT. § 905.10(3)(c). He asserts that he needed to know the identity of the informant to determine the legality of the investigative stop. We are not convinced.

¶21 Circuit courts are vested with discretion when it comes to determining whether to grant a disclosure motion under WIS. STAT. § 905.10. *See State v. Fischer*, 147 Wis. 2d 694, 703, 433 N.W.2d 647 (Ct. App. 1988). We are obliged to uphold a discretionary determination if we can independently conclude that the facts of record applied to the proper legal standards support the circuit court’s decision. *See Andrew J.N. v. Wendy L.D.*, 174 Wis. 2d 745, 767, 498 N.W.2d 235 (1993).

¶22 WISCONSIN STAT. § 905.10(3)(c) provides that a judge may require disclosure of an informer’s identity if information from the informer is relied upon to establish the legality of the seizure of evidence and the judge is not satisfied that the informer was reasonably believed to be reliable or credible. The circuit court, in its decision and order denying Jones’s motion for postconviction relief on this issue, wrote:

The defendant argues that his motion for disclosure under section 905.10(3)(c), Stats., should have been addressed (and granted) before the court determined that the information was reliable and credible. Section 905.10(3)(c), Stats., provides that the judge *may* require the identity of the informer to be disclosed “[*iff* ... the judge is not satisfied that the information was received from an informer reasonably believed to be reliable or credible....” Given the large amount of corroboration involved in this case, the court did not believe that disclosure of the [confidential informant] was necessary for the court to find that the information provided by the [confidential informant] was “reasonably believed to be reliable or credible” and that the stop was justified by reasonable suspicion.

(Two sets of brackets added.) We agree.

¶23 For all the reasons discussed above, the information from the confidential informant was properly deemed reliable and credible. The circuit court therefore did not err in refusing to order disclosure of the informant’s identity.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

